

AMENDED IN SENATE JULY 3, 2012
AMENDED IN ASSEMBLY MAY 14, 2012
AMENDED IN ASSEMBLY APRIL 26, 2012
AMENDED IN ASSEMBLY APRIL 16, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2273

**Introduced by Assembly Member Wieckowski
(Coauthor: Assembly Member Dickinson)**

February 24, 2012

An act to amend Section 2924b of, and to add Section 2924.1 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2273, as amended, Wieckowski. Common interest developments: required documents.

The Davis-Stirling Common Interest Development Act provides for the creation and regulation of common interest developments. Under existing law, a common interest development is managed by an association pursuant to the provisions of the governing documents of the development. Existing law also imposes various requirements that must be satisfied prior to exercising a power of sale under a mortgage or deed of trust.

This bill would, notwithstanding any other law, require the transfer, following the sale, of a property in a common interest development, as defined, executed under a power of sale contained in any deed of trust or mortgage to be recorded within 30 days, as specified.

Existing law requires a trustee or mortgagee to record a notice of default and to post and publish a notice of sale prior to selling real property at a foreclosure sale. Existing law allows an association, with respect to separate interests governed by the association, to record a single request that a mortgagee, trustee, or other person authorized to record a notice of default regarding any of those separate interests mail to the association a copy of any trustee's deed upon sale concerning a separate interest, as specified. Existing law requires that the information requested by the association be mailed within 15 business days following the date the trustee's deed is recorded.

This bill would instead require that the requested information described above be mailed to the association within 15 business days following the date of the trustee's sale.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2924.1 is added to the Civil Code, to
2 read:

3 2924.1. (a) Notwithstanding any other law, the transfer,
4 following the sale, of property in a common interest development,
5 as defined by Section 1351, executed under the power of sale
6 contained in any deed of trust or mortgage, shall be recorded within
7 30 days after the date of sale in the office of the county recorder
8 where the property or a portion of the property is located.

9 (b) Any failure to comply with the provisions of this section
10 shall not affect the validity of a *trustee's sale or a* sale in favor of
11 a bona fide purchaser.

12 SEC. 2. Section 2924b of the Civil Code is amended to read:

13 2924b. (a) Any person desiring a copy of any notice of default
14 and of any notice of sale under any deed of trust or mortgage with
15 power of sale upon real property or an estate for years therein, as
16 to which deed of trust or mortgage the power of sale cannot be
17 exercised until these notices are given for the time and in the
18 manner provided in Section 2924 may, at any time subsequent to
19 recordation of the deed of trust or mortgage and prior to recordation
20 of notice of default thereunder, cause to be filed for record in the
21 office of the recorder of any county in which any part or parcel of
22 the real property is situated, a duly acknowledged request for a

(1) Within 10 business days following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(2) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(3) As used in paragraphs (1) and (2), the “last known address” of each trustor or mortgagor means the last business or residence physical address actually known by the mortgagee, beneficiary, trustee, or other person authorized to record the notice of default. For the purposes of this subdivision, an address is “actually known” if it is contained in the original deed of trust or mortgage, or in any subsequent written notification of a change of physical address from the trustor or mortgagor pursuant to the deed of trust or mortgage. For the purposes of this subdivision, “physical address” does not include an e-mail or any form of electronic address for a trustor or mortgagor. The beneficiary shall inform the trustee of the trustor’s last address actually known by the beneficiary. However, the trustee shall incur no liability for failing to send any notice to the last address unless the trustee has actual knowledge of it.

(4) A “person authorized to record the notice of default or the notice of sale” shall include an agent for the mortgagee or beneficiary, an agent of the named trustee, any person designated in an executed substitution of trustee, or an agent of that substituted trustee.

(c) The mortgagee, trustee, or other person authorized to record the notice of default or the notice of sale shall do the following:

(1) Within one month following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person set forth in paragraph (2), provided that the estate or interest of any person entitled to receive notice under this subdivision is acquired by an instrument sufficient to impart constructive notice of the estate or interest in the land or portion thereof that is subject to the deed of trust or

1 mortgage being foreclosed, and provided the instrument is recorded
2 in the office of the county recorder so as to impart that constructive
3 notice prior to the recording date of the notice of default and
4 provided the instrument as so recorded sets forth a mailing address
5 that the county recorder shall use, as instructed within the
6 instrument, for the return of the instrument after recording, and
7 which address shall be the address used for the purposes of mailing
8 notices herein.

9 (2) The persons to whom notice shall be mailed under this
10 subdivision are:

11 (A) The successor in interest, as of the recording date of the
12 notice of default, of the estate or interest or any portion thereof of
13 the trustor or mortgagor of the deed of trust or mortgage being
14 foreclosed.

15 (B) The beneficiary or mortgagee of any deed of trust or
16 mortgage recorded subsequent to the deed of trust or mortgage
17 being foreclosed, or recorded prior to or concurrently with the
18 deed of trust or mortgage being foreclosed but subject to a recorded
19 agreement or a recorded statement of subordination to the deed of
20 trust or mortgage being foreclosed.

21 (C) The assignee of any interest of the beneficiary or mortgagee
22 described in subparagraph (B), as of the recording date of the notice
23 of default.

24 (D) The vendee of any contract of sale, or the lessee of any
25 lease, of the estate or interest being foreclosed that is recorded
26 subsequent to the deed of trust or mortgage being foreclosed, or
27 recorded prior to or concurrently with the deed of trust or mortgage
28 being foreclosed but subject to a recorded agreement or statement
29 of subordination to the deed of trust or mortgage being foreclosed.

30 (E) The successor in interest to the vendee or lessee described
31 in subparagraph (D), as of the recording date of the notice of
32 default.

33 (F) The office of the Controller, Sacramento, California, where,
34 as of the recording date of the notice of default, a "Notice of Lien
35 for Postponed Property Taxes" has been recorded against the real
36 property to which the notice of default applies.

37 (3) At least 20 days before the date of sale, deposit or cause to
38 be deposited in the United States mail an envelope, sent by
39 registered or certified mail with postage prepaid, containing a copy
40 of the notice of the time and place of sale addressed to each person

1 to whom a copy of the notice of default is to be mailed as provided
2 in paragraphs (1) and (2), and addressed to the office of any state
3 taxing agency, Sacramento, California, that has recorded,
4 subsequent to the deed of trust or mortgage being foreclosed, a
5 notice of tax lien prior to the recording date of the notice of default
6 against the real property to which the notice of default applies.

7 (4) Provide a copy of the notice of sale to the Internal Revenue
8 Service, in accordance with Section 7425 of the Internal Revenue
9 Code and any applicable federal regulation, if a “Notice of Federal
10 Tax Lien under Internal Revenue Laws” has been recorded,
11 subsequent to the deed of trust or mortgage being foreclosed,
12 against the real property to which the notice of sale applies. The
13 failure to provide the Internal Revenue Service with a copy of the
14 notice of sale pursuant to this paragraph shall be sufficient cause
15 to rescind the trustee’s sale and invalidate the trustee’s deed, at
16 the option of either the successful bidder at the trustee’s sale or
17 the trustee, and in either case with the consent of the beneficiary.
18 Any option to rescind the trustee’s sale pursuant to this paragraph
19 shall be exercised prior to any transfer of the property by the
20 successful bidder to a bona fide purchaser for value. A rescision of
21 the trustee’s sale pursuant to this paragraph may be recorded in a
22 notice of rescision pursuant to Section 1058.5.

23 (5) The mailing of notices in the manner set forth in paragraph
24 (1) shall not impose upon any licensed attorney, agent, or employee
25 of any person entitled to receive notices as herein set forth any
26 duty to communicate the notice to the entitled person from the fact
27 that the mailing address used by the county recorder is the address
28 of the attorney, agent, or employee.

29 (d) Any deed of trust or mortgage with power of sale hereafter
30 executed upon real property or an estate for years therein may
31 contain a request that a copy of any notice of default and a copy
32 of any notice of sale thereunder shall be mailed to any person or
33 party thereto at the address of the person given therein, and a copy
34 of any notice of default and of any notice of sale shall be mailed
35 to each of these at the same time and in the same manner required
36 as though a separate request therefor had been filed by each of
37 these persons as herein authorized. If any deed of trust or mortgage
38 with power of sale executed after September 19, 1939, except a
39 deed of trust or mortgage of any of the classes excepted from the
40 provisions of Section 2924, does not contain a mailing address of

1 the trustor or mortgagor therein named, and if no request for special
2 notice by the trustor or mortgagor in substantially the form set
3 forth in this section has subsequently been recorded, a copy of the
4 notice of default shall be published once a week for at least four
5 weeks in a newspaper of general circulation in the county in which
6 the property is situated, the publication to commence within 10
7 business days after the filing of the notice of default. In lieu of
8 publication, a copy of the notice of default may be delivered
9 personally to the trustor or mortgagor within the 10 business days
10 or at any time before publication is completed, or by posting the
11 notice of default in a conspicuous place on the property and mailing
12 the notice to the last known address of the trustor or mortgagor.

13 (e) Any person required to mail a copy of a notice of default or
14 notice of sale to each trustor or mortgagor pursuant to subdivision
15 (b) or (c) by registered or certified mail shall simultaneously cause
16 to be deposited in the United States mail, with postage prepaid and
17 mailed by first-class mail, an envelope containing an additional
18 copy of the required notice addressed to each trustor or mortgagor
19 at the same address to which the notice is sent by registered or
20 certified mail pursuant to subdivision (b) or (c). The person shall
21 execute and retain an affidavit identifying the notice mailed,
22 showing the name and residence or business address of that person,
23 that he or she is over the age of 18 years, the date of deposit in the
24 mail, the name and address of the trustor or mortgagor to whom
25 sent, and that the envelope was sealed and deposited in the mail
26 with postage fully prepaid. In the absence of fraud, the affidavit
27 required by this subdivision shall establish a conclusive
28 presumption of mailing.

29 (f) (1) Notwithstanding subdivision (a), with respect to separate
30 interests governed by an association, as defined in subdivision (a)
31 of Section 1351, the association may cause to be filed in the office
32 of the recorder in the county in which the separate interests are
33 situated a request that a mortgagee, trustee, or other person
34 authorized to record a notice of default regarding any of those
35 separate interests mail to the association a copy of any trustee's
36 deed upon sale concerning a separate interest. The request shall
37 include a legal description or the assessor's parcel number of all
38 the separate interests. A request recorded pursuant to this
39 subdivision shall include the name and address of the association
40 and a statement that it is a homeowners' association. Subsequent

1 requests of an association shall supersede prior requests. A request
2 pursuant to this subdivision shall be recorded before the filing of
3 a notice of default. The mortgagee, trustee, or other authorized
4 person shall mail the requested information to the association
5 within 15 business days following the date of the trustee's sale.
6 Failure to mail the request, pursuant to this subdivision, shall not
7 affect the title to real property.

8 (2) A request filed pursuant to paragraph (1) does not, for
9 purposes of Section 27288.1 of the Government Code, constitute
10 a document that either effects or evidences a transfer or
11 encumbrance of an interest in real property or that releases or
12 terminates any interest, right, or encumbrance of an interest in real
13 property.

14 (g) No request for a copy of any notice filed for record pursuant
15 to this section, no statement or allegation in the request, and no
16 record thereof shall affect the title to real property or be deemed
17 notice to any person that any person requesting copies of notice
18 has or claims any right, title, or interest in, or lien or charge upon
19 the property described in the deed of trust or mortgage referred to
20 therein.

21 (h) "Business day," as used in this section, has the meaning
22 specified in Section 9.